

MINUTES
CORRECTIONS STANDARDS AUTHORITY MEETING
THURSDAY, MAY 6 2010
600 BERCUT DRIVE
SACRAMENTO, CA 95811
(916) 445-5073

Meeting held at: Department Corrections & Rehabilitation, 1515 S Street, Sacramento, CA 95814

Mr. Matthew Cate, Chair, welcomed everyone to the May 6, 2010 Corrections Standards Authority (CSA) meeting.

Mr. Cate asked Ms. Krysten Meyer, Executive Assistant to call roll.

The following members were in attendance:

Mr. Cate	Ms. Silva	Ms. Biondi	Ms. McBrayer
Mr. Kernan	Ms. Penner	Ms. Epps	Ms. Minor
Mr. Warner	Mr. Ingrassia	Mr. Adams	Ms. Bates
Ms. Silbert	Mr. Crowder	Mr. Townsy	

ABSENCE OF BOARD MEMBERS

Ms. Krysten Meyer announced the absences of the Board members and the reason for their absence.

Mr. Prieto, Mr. Baca, Ms. Arnold, and Ms. Campbell had prior commitments. There was a quorum.

Mr. Wilson, Executive Director, CSA, provided the Board with an update.

APPROVAL OF THE MINUTES OF THE MARCH 11, 2010 MEETING,
(AGENDA ITEMS 1)

Mr. Cate asked for a motion to approve the March 11, 2010 Minutes.

A motion to approve the March 11, 2010 minutes was made by Ms. McBrayer and seconded by Mr. Adams. Mr. Ingrassia Abstained. The motion carried.

Mr. Cate asked for comments. There were none.

AB 900 PHASE I REQUEST FOR PROPOSALS (RFP) – CASH MATCH

(AGENDA ITEM 2)

Leslie Heller presented this action agenda item regarding the AB 900 Jail Construction Program concerning match and specifically a request to reduce to the 25% legislated minimum match amount for those affected counties. If approved, this would be accomplished with the counties maintaining their original project scope and staying within their original award amount. A quick history on this matter: The AB 900 legislation specifies that county matching funds shall be a minimum of 25 percent of the total project costs. The legislation further states that counties under 200,000 in general population may petition the CSA and request a lower level of matching funds. Two of the currently awarded counties were previously provided a match reduction by this Board. When the AB 900 Executive Steering Committee, appointed by the CSA Board, met in September 2007 to develop their recommendations to the Board for the award process and components of the Request for Proposals or RFP, the committee set a variety of parameters or requirements on the subject of match, to include that cash match was an evaluation factor in the proposal evaluation and rating process. The Board accepted the Executive Steering Committee's recommendations on match and issued the Request for Proposals setting the match parameters. The first AB 900 RFP was issued by the CSA board in December 2007 and the second in July 2009. The cash match evaluation factor essentially encouraged counties to submit greater than the minimum required match. Within the 25% minimum match, all small and medium counties had a requirement of at least 5% of the total project costs being cash/hard match and for large counties at least 10% had to be cash match. If we fast forward to where we are today, over the past couple of months CSA staff, along with its partners in CDCR, Department of General Services and Department of Finance, have spent much time working with the 11 currently awarded AB 900 counties as we prepare to start moving projects toward construction. As counties reevaluate the costs of their projects, and their project budgets that were submitted with their proposals in March 2008, it is recognized by some counties that the project costs may not be quite as high as they were 2+ years ago when the projects were estimated in a different economic climate. Coupled with that, it's known by all of us that budgets are tight, to say the least, and bringing a jail project to fruition is a challenge, however the need remains great. For counties that proposed an abundance of cash match and exceeded the minimum 25% match requirement, meeting the match requirement is a challenge unto itself. Discussions are on-going with counties on how they can meet this challenge, keeping their original project scopes as proposed and staying within the limits of the state dollar amounts already awarded. A common theme in terms of requests from counties has been to look back at the legislated minimum, the 25% match, and the minimum cash match amounts established in the RFP and Title 15 funding regulations. There are four counties with an overall match amount greater than 25%, Kern, San Bernardino, San Diego and San Joaquin. With this said, staff is recommending that the Board reduce the overall match amount for any eligible counties to the minimum 25% match requirement.

Ms. Heller asked for questions.

Mr. Cate stated that his understanding of what is being discussed is overmatch from counties who have put forward a willingness to put in more than the 25% minimum, and that what the Board would recommend if project costs come in lower than anticipated is that the overmatch would be reduced by the amount that the project costs are reduced.

If the project costs came down and the State's \$100 million stays the same, then the county would benefit rather than the state and the county benefiting; just the county would benefit down to 25% as the costs came down. Legal counsel has advised this would be a de minimis change to the RFP to allow counties in these conditions to reduce their match amounts

Ms. Heller replied that she thinks there are two ways to look at it, one is just to allow them to reduce their match down to 25% at this time with the Board's authority. That doesn't mean that they get more than \$100 million, and it doesn't mean that the costs the county has on the project would go away, but it would allow them to show a lesser amount of cash match.

Ms. McBrayer stated that she believes what Ms. Heller described isn't feasible, maybe they wouldn't come back to the state for more money but they would need to do something, they have to reduce the project. So maybe they are going to build a smaller project but you can't reduce the match because they are saying the total eligible project cost, using San Diego is \$287 million. If they reduce the match the project cost has to be reduced.

Mr. Cate added that the county can't change the scope of their project because that would be a violation of the RFP. So if the state pays more or the county builds less both of those would violate the RFP and we would be starting over from scratch.

Ms. Heller added that what the county shows in their budget to CSA as being their match isn't necessarily reflective of their total project cost. Counties were able to choose what they wanted to put into that budget. San Diego is one county, although not alone in that it's possible that their project will cost less than what they originally anticipated. Without changing their match and having the state benefit from any cost savings as well, they would not reap \$100 million dollars despite the fact that their a project would be well over \$200 million in cost.

Mr. Cate stated that if the scope stays the same but they find efficiencies, the idea is the state's \$100 million stays the same and whatever percentage of that it represents stays the same. They can bring their match down to 25% as long as the State's amount and the scope don't change.

Ms. Heller added that with the exception that under the scenario the percentage the state puts into the project would likely go up because their match is going to go down.

Mr. Cate asked if hard dollars would still remain the same.

Ms. Heller replied that hard dollars would still be capped at \$100 million; it just means that their match may drop lower than 65%.

Ms. Silbert asked what they would be able to change. If the costs don't come down then something would have to be cut. Are they cutting programs?

Mr. Wilson replied that the scope of the project would not change under the Board item and neither would the State's share of the cost increase.

Ms. Silbert asked if the scope includes reentry programs.

Ms. Heller replied that it does not include programs as it is actually hard construction for county jail facilities. There is not programming funding for this.

Mr. Wilson stated that where the savings would come from goes back to when these numbers were drawn up for the original submittal of the RFP, construction costs were considerably higher. To the extent they can now get the same project built for less dollars then they could have two and one-half years ago. This item gives them the opportunity to essentially benefit from those savings without changing the scope and without adding extra dollars from the State's side.

Mr. Cate stated that what we're doing is stating that 25% remains the statutory floor but if the counties are able to increase efficiencies without changing the scope in any way, then their match would go down in the same amount the costs went down, but the State's amount would stay the same.

Ms. Silbert stated that the counties were supposedly selected on criteria that included reentry programming. They are not being held to that criteria when you use the phrase "scope of work", is that correct?

Mr. Cate replied that the reentry portion was that the county still has to provide land to build a reentry facility. That hasn't changed and the state is still committed to building reentry facilities and having them contain rehabilitative programs. The Sheriff's don't have that obligation; the states obligation would be to build reentry facilities and to have rehabilitative programming as part of those facilities.

Ms. Silbert stated in order to summarize this bill that started out as a reentry building bill is now just building new jails, is that correct?

Mr. Cate replied it's always been the same, to entice counties to let the state have land to build reentry facilities. The counties needed jails and so the AB 900 said as long as the state can build reentry facilities with rehabilitative programming, we'll help the counties build the jail space they need. It's exactly the same as it's always been. When we say change of scope, the idea is the size of the jail, number of beds and number of cells in the jail stay the same. There's no maximum or minimum rehabilitative programming space that's part of the scope correct.

Ms. Heller replied that's correct.

Ms. Epps stated that essentially the issue is construction itself, allowing the reduction in match because of the cost reduction for construction costs which are now expected to come in under the original amount for construction.

Mr. Cate replied that is correct, and he believes Ms. Silbert's concern was that the counties would then say let's cut all of the rehabilitative program space we originally planned to bring construction costs down and still be within scope.

Mr. Wilson stated that the same project they committed to building before would be the

same project they would build if this item passes. There are no changes to the project itself.

Mr. Townsley confirmed that the counties are looking for relief from the match burden since they anticipate their projects are likely to cost less at this point.

Ms. Silbert stated so essentially any relief that comes would come from their portion of the match.

Ms. Heller stated that's correct.

Mr. Cate stated that building the exact same facility will likely cost less from when the original estimates were done and the point of this item is to see if the board is willing to tell counties we'll allow the State's portion to stay the same and we'll allow the county to reduce their overmatch by the amount the total construction costs come down.

Mr. Cate added for the record that Mr. Kernan joined the meeting.

A motion to approve the staff recommendation to reduce the overall match amount for any eligible counties to the minimum 25 percent match requirement was made by Ms. Silbert and seconded by Ms. Bates. Mr. Ingrassia Abstained. The motion carried.

Mr. Cate asked for further discussion or public comment.

Sheriff Curtis Hill, San Benito County, representing the State Sheriff's Association, added that he thinks this is a good motion and it's going to save the four counties a tremendous amount of dollars potentially. It's a good move on CSA's part.

CORRECTIONS STANDARDS AUTHORITY (CSA) JAIL CONSTRUCTION AGREEMENT – PROJECT FUNDING (AGENDA ITEM 3)

Leslie Heller presented this action AB 900 agenda item as it relates to the amount of retention being held on county jail projects under the AB 900 Jail Construction Program. Specifically the Board is being asked to consider a reduction in that amount. The impetus for this request is very similar to the previous agenda item, that being the current economic climate. It has been a long standing requirement of the construction program for CSA to withhold payment of the last 20% of state dollars to be paid out on a construction project. This means that in the final several months of a project there is no state financial assistance being provided. The purpose of this retention is to ensure that the construction is completed, final financial auditing and project reporting is completed, and the facility is staffed and occupied within 90 days of construction completion, thus ensuring proper use of public funds. When those final requirements are met the retention being withheld is released to the county. The AB 900 RFPs issued by this Board stated this retention condition, as do the funding regulations. A contractual document entitled the CSA Jail Construction Agreement was released to counties for purposes of providing a contract between CSA and the counties for construction of the jail projects. Those

agreements have not yet been signed. The agreement echoes the 20% retention amount. CSA staff, along with its state partners in this AB 900 jail construction financing process, held a CSA Agreement conference call in April for purposes of giving the counties and other interested parties the opportunity to ask questions or provide other comments on the contractual agreement. In recent times every AB 900 county has raised the retention withhold amount issue, requesting consideration of a lesser amount than the 20%, consistently messaging the current budgetary constraints and the burden it places on counties to float that amount of money for a period of several months while the project is completed and becoming operational. As you may recall some of the projects have \$100 million awards, yet even on smaller awards counties are finding the 20% overly burdensome. Looking at historical information during the 30 years this program has been administered through CSA and under its predecessor name – the Board of Corrections, we can see that the funding administered through the state was in significantly lesser amounts. During the most recent wave of construction projects during the years of 1997 to 2007 there were just over 100 projects and most of them smaller projects due to the dollars available. Only 8 of those projects exceeded even \$20 million, and none exceeded \$34 million. Inflation and economics aside, it seems the retention amount today may be rather disproportionate, let alone burdensome perhaps. Legal counsel in the State Department of General Services has provided some input on this issue and references a specific Public Contract Code section as contained in the agenda item, with indication this section could be used as a guide for this situation with jail projects. This section notes that not less than five percent retention can be withheld. In closing given these considerations, and with an eye towards assisting counties in their need to construct much needed jail beds, staff is recommending that the board consider a reduction in the retention amount to five percent.

Ms. Heller asked for questions.

Ms. Bates stated that on the letter from Calaveras County they are suggesting 10 percent. Is it going to be something that is discretionary down to 5 percent?

Ms. Heller replied that Ms. Bates is correct and that would be a decision of the Board. For consistency sake the Board may want to consider having one retention amount for all counties.

Ms Penner stated that she supports the reduction. It has not always been the case with construction money that the facilities had to be up and fully staffed and running. Perhaps fully staffed is particular to just these public works bonds.

Ms. Heller replied that the staffing needs to be pertinent to the number of inmates in the facility when it opens.

Ms. Penner questioned whether the county would have to use the entire facility, but just rate it according to what portion they are going to open.

Ms. Heller replied that the rating would be done on the entire facility but in terms of the number of inmates that are in there it would be whatever the sheriff has in custody at the time that facility would open.

Ms. Penner stated that when the facility in Fresno County was opened, I was unable to

fully staff it. The county could not afford it. We could have had a number of additional minors incarcerated but because we could only staff it in a particular way we could not fully open the facility. So is that a fact you could have a rated capacity but only be able to staff it to a particular level based on the count's ability?

Ms. Heller replied it would have to be safely staffed to the number of inmates that are put in the facility when it opens. The facility does need to be fully completed and occupied to whatever number of inmates the Sheriff would have when the facility opens.

Ms. Silbert stated that it doesn't have to be fully occupied so it wouldn't have to be fully staffed.

Ms. Heller replied that is correct. Not every bed has to be occupied.

Ms. Penner stated that the part she was worried about was that it would have to be fully occupied for the public works bonds. But I think you answered that, that they do not have to be fully occupied.

Ms. Heller replied that is correct.

Mr. Cate asked for further questions.

Mr. Townsy asked if this would be permanent or temporary.

Ms. Heller replied that it would be permanent for the AB 900 program, absent any other action from the Board.

A motion to approve the staff recommendation to reduce the twenty percent retention to five percent as allowed by Public Contract Code Section 10261 was made by Ms. Epps and seconded by Ms. Penner. Mr. Ingrassia Abstained. The motion carried.

Mr. Cate asked for further discussion or public comment. There was none.

PUBLIC COMMENT

(AGENDA ITEM 4)

Mr. Cate asked if there was any public comment.

Mr. Cate thanked staff and called the meeting to a close.

Next meeting: Thursday, July 15, 2010 at 1:00 p.m. in Sacramento, CA.

Meeting adjourned at 2:10 p.m.

Respectfully submitted,

Originally signed by

KRYSTEN MEYER
Executive Assistant
Corrections Standards Authority

ROSTER OF PERSONS IN ATTENDANCE

CSA Board Members

Mr. Cate, Secretary, CDCR
Mr. Kernan, Undersecretary, CDCR
Mr. Warner, Chief Deputy Secretary, Juvenile Justice
Ms. Silva, Administrator, Juvenile Justice
Ms. Minor, Chief, Division of Adult Programs
Ms. Bates, Supervisor, Orange County
Ms. Penner, Chief Probation Officer, Fresno County
Ms. Epps, Supervising Probation Officer, San Bernardino County
Ms. McBrayer, Executive Director, The Children's Initiative
Mr. Ingrassia, San Diego County Sheriff's Department
Ms. Biondi, Public Member
Mr. Adams, Yuba County Sheriff's Department
Mr. Townsy, Folsom State Prison
Mr. Crowder, Parole Agent

CSA Staff

Kurt O. Wilson, Executive Director
Krysten Meyer, Executive Assistant
Robert Takeshta, Deputy Director, CFC
Marlon Yarber, Deputy Director, CPP
Gary Wion, Deputy Director, FSO
Leslie Heller, Field Representative, CFC
Debbie Rives, Deputy Director, STC